78B-3-101. Husband and wife -- Actions -- Defense -- Absent spouse.

(1) If a husband and wife are sued jointly, either or both may defend in each one's own right or for both parties.

(2) Either party to a marriage may sue and be sued in the same manner as if the person is unmarried.

(3) When a spouse has deserted the family, the remaining spouse may prosecute or defend in the absent spouse's name any action which the absent spouse might have prosecuted or defended. All powers and rights the absent spouse might have shall be extended to the remaining spouse.

Enacted by Chapter 3, 2008 General Session

78B-3-102. Injury of a child -- Suit by parent or guardian.

(1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, a parent or guardian may bring an action for the injury of a minor child when the injury is caused by the wrongful act or neglect of another.

(2) A civil action may be maintained against the person causing the injury or, if the person is employed by another person who is responsible for that person's conduct, also against the employer.

(3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in an action for the injury of a child, a guardian ad litem may be appointed for the injured child according to the procedures outlined in Sections 78A-2-703 and 78A-2-705.

Amended by Chapter 267, 2014 General Session

78B-3-103. Successive actions on same contract.

Successive actions may be maintained upon the same contract or transaction if, after a former action, a new cause of action arises from it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-104. Actions against officers -- Bond required -- Costs and attorney fees.

(1) A person may not file an action against a law enforcement officer acting within the scope of the officer's official duties unless the person has posted a bond in an amount determined by the court.

(2) The bond shall cover all estimated costs and attorney fees the officer may be expected to incur in defending the action, in the event the officer prevails.

(3) The prevailing party shall recover from the losing party all costs and attorney fees allowed by the court.

(4) In the event the plaintiff prevails, the official bond of the officer shall be liable for the plaintiff's costs and attorney fees.

Enacted by Chapter 3, 2008 General Session

78B-3-105. Definition of heir.

As used in Sections 78B-3-106 and 78B-3-107, "heirs" means:

(1) the following surviving persons:

(a) the decedent's spouse;

(b) the decedent's children as provided in Section 75-2-114;

(c) the decedent's natural parents, or if the decedent was adopted, then his adoptive parents;

(d) the decedent's stepchildren who:

(i) are in their minority at the time of decedent's death; and

(ii) are primarily financially dependent on the decedent.

(2) "Heirs" means any blood relative as provided by the law of intestate succession if the decedent is not survived by a person under Subsections (1)(a), (b), or (c).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-106. Death of a person -- Suit by heir or personal representative.

(1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, when the death of a person is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if the person is employed by another person who is responsible for his conduct, then against the other person.

(2) If the adult person has a guardian at the time of his death, only one action may be maintained for the person's injury or death.

(3) The action may be brought by either the personal representatives of the adult deceased person, for the benefit of the person's heirs, or by the guardian for the benefit of the heirs, as defined in Section 78B-3-105.

(4) In every action under this section and Section 78B-3-105 damages may be given as under all the circumstances of the case may be just.

Amended by Chapter 79, 2009 General Session
Amended by Chapter 146, 2009 General Session

78B-3-106.5. Claims brought by presumptive personal representative.

(1) "Presumptive personal representative" means:

(a) the spouse of the decedent not alleged to have contributed to the death of the decedent;

(b) if no spouse exists, the spouse of the decedent is incapacitated, or if the spouse of the decedent is alleged to have contributed to the death of the decedent, then an adult child of the decedent not alleged to have contributed to the death of the decedent; or

(c) if the spouse and all children of the decedent are incapacitated, or are alleged to have contributed to the death of the decedent, then a parent of the decedent.

(2) (a) Forty-five days after the death of a person, including a minor, caused by the wrongful act or neglect of another, the presumptive personal representative may present to an insurer and resolve with the insurer a claim for policy limits up to $25,000

for liability and uninsured motorist claims, $10,000 for underinsured motorist claims, and execute any applicable release of liability upon presentation of an affidavit, properly notarized, stating that:

(i) the person presenting the affidavit is the presumptive personal representative;

(ii) 45 days have elapsed since the death of the decedent;

(iii) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(iv) notice of intent to resolve the claim has been sent to the last-known addresses of all heirs as defined by Section 78B-3-102 or 78B-3-105.

(b) Claims for personal injury protection benefits resulting from the death of an insured are exempt from the 45-day waiting requirement, but shall include all information required in Subsections (2)(a)(i), (iii), and (iv).

(3) The presumptive personal representative's claim shall be on behalf of all heirs of the decedent as defined by Section 78B-3-102 or 78B-3-105. The personal representative shall have the same duties toward other heirs as those duties provided in Sections 75-3-701 through 75-3-720.

(4) Any insurer and its insured paying a claim arising out of the wrongful death of a person, including a minor, including but not limited to claims for uninsured or underinsured motorist coverage as provided in Section 31A-22-305, to a presumptive personal representative upon presentation of an affidavit as described in Subsection (2) are discharged and released to the same extent as if the insurer and its insured dealt with a personal representative of the decedent. The insurer and its insured are not required to inquire into the truth of any statement in the affidavit.

(5) Nothing in this section affects or prevents, to the limits of insurance protection only, any claim for first party benefits or a proceeding to establish the liability of a tort feasor insured under any policy of insurance in addition to the policy under which the claim was presented and paid under Subsection (2).

(6) If any heirs are minors, the presumptive personal representative may not distribute more than 50% of the proceeds of the settlement until the distribution has been approved by a court approved settlement in which a conservator is appointed for any minor heirs.

Amended by Chapter 50, 2011 General Session

78B-3-107. Survival of action for injury or death to person, upon death of wrongdoer or injured person -- Exception and restriction to out-of-pocket expenses.

(1) (a) A cause of action arising out of personal injury to a person, or death caused by the wrongful act or negligence of a wrongdoer, does not abate upon the death of the wrongdoer or the injured person. The injured person, or the personal representatives or heirs of the person who died, has a cause of action against the wrongdoer or the personal representatives of the wrongdoer for special and general damages, subject to Subsection (1)(b).

(b) If, prior to judgment or settlement, the injured person dies as a result of a cause other than the injury received as a result of the wrongful act or negligence of the

wrongdoer, the personal representatives or heirs of the person have a cause of action against the wrongdoer or personal representatives of the wrongdoer for special and general damages which resulted from the injury caused by the wrongdoer and which occurred prior to death of the injured party from the unrelated cause. General damages may not exceed $100,000.

(c) If the death of the injured party from an unrelated cause occurs more than six months after the incident giving rise to the claim for damages, the claim shall be limited to special damages unless, prior to the injured party's death:

(i) written notice of intent to hold the wrongdoer responsible has been mailed to or served upon the wrongdoer or the wrongdoer's insurance carrier or the uninsured motorist carrier of the injured party, and proof of mailing or service can be produced upon request; or

(ii) a claim for damages against the wrongdoer or against the uninsured motorist carrier of the injured party is the subject of ongoing negotiations between the parties or persons representing the parties or their insurers.

(d) A subsequent claim against an underinsured motorist carrier for which the injured party was a covered person is not subject to the notice requirement described in Subsection (1)(c).

(e) In no event shall the general damage award exceed $100,000 regardless of available liability, uninsured or underinsured motor vehicle coverage.

(2) Under Subsection (1) neither the injured person nor the personal representatives or heirs of the person who dies may recover judgment except upon competent satisfactory evidence other than the testimony of the injured person.

(3) This section may not be construed to be retroactive.

Amended by Chapter 220, 2014 General Session

78B-3-108. Shoplifting -- Merchant's rights -- Civil liability for shoplifting by adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice required for penalty demand.

(1) As used in this section:

(a) "Merchandise" has the same meaning as provided in Section 76-6-601.

(b) "Merchant" has the same meaning as provided in Section 76-6-601.

(c) "Minor" has the same meaning as provided in Section 76-6-601.

(d) "Premises" has the same meaning as "retail mercantile establishment" found in Section 76-6-601.

(2) A merchant may request an individual on the merchant's premises to place or keep in full view any merchandise the individual may have removed, or which the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose. The merchant may not be criminally or civilly liable for having made the request.

(3) A merchant who has reason to believe that an individual has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and that the merchant can recover the merchandise by taking the individual into custody and detaining the individual may, for the purpose of attempting to recover the merchandise

or for the purpose of informing a peace officer of the circumstances of the detention, take the individual into custody and detain the individual in a reasonable manner and for a reasonable length of time. Neither the merchant nor the merchant's employee may be criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.

(4) (a) A merchant may prohibit an individual who has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii) from reentering the premises on which the individual has committed the offense.

(b) The merchant shall give written notice of this prohibition to the individual under Subsection (4)(a). The notice may be served by:

(i) delivering a copy to the individual personally;

(ii) sending a copy through registered or certified mail addressed to the individual at the individual's residence or usual place of business;

(iii) leaving a copy with an individual of suitable age and discretion at either location under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or place of business if the individual is absent from the residence or usual place of business; or

(iv) affixing a copy in a conspicuous place at the individual's residence or place of business.

(c) The individual serving the notice may authenticate service with the individual's signature, the method of service, and legibly documenting the date and time of service.

(5) An adult who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is also liable in a civil action for:

(a) actual damages;

(b) a penalty to the merchant in the amount of the retail price of the merchandise not to exceed $1,000; and

(c) an additional penalty as determined by the court of not less than $100 nor more than $500, plus court costs and reasonable attorney fees.

(6) A minor who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and severally liable in a civil action to the merchant for:

(a) actual damages;

(b) a penalty to be remitted to the merchant in the amount of the retail price of the merchandise not to exceed $500 plus an additional penalty as determined by the court of not less than $50 nor more than $500; and

(c) court costs and reasonable attorney fees.

(7) A parent or guardian is not liable for damages under this section if the parent or guardian made a reasonable effort to restrain the wrongful taking and reported it to the merchant involved or to the law enforcement agency having primary jurisdiction once the parent or guardian knew of the minor's unlawful act. A report is not required under this section if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the merchant involved.

(8) A conviction in a criminal action for any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is not a condition precedent to a civil action authorized

under Subsection (5) or (6).

(9) (a) A merchant demanding payment of a penalty under Subsection (5) or (6) shall give written notice to the individual or individuals from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

(b) This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of the penalty described in Subsection (5) or (6).

(10) The provision of Section 78B-8-201 requiring that compensatory or general damages be awarded in order to award punitive damages does not prohibit an award of a penalty under Subsection (5) or (6) whether or not restitution has been paid to the merchant either prior to or as part of a civil action.

Amended by Chapter 257, 2012 General Session

78B-3-109. Right to life -- State policy -- Act or omission preventing abortion not actionable -- Failure or refusal to prevent birth not a defense.

(1) The Legislature finds and declares that it is the public policy of this state to encourage all persons to respect the right to life of all other persons, regardless of age, development, condition, or dependency, including all persons with a disability and all unborn persons.

(2) A cause of action may not arise, and damages may not be awarded, on behalf of any person, based on the claim that but for the act or omission of another, a person would not have been permitted to have been born alive but would have been aborted.

(3) The failure or refusal of any person to prevent the live birth of a person may not be a defense in any action, and may not be considered in awarding damages or child support, or imposing a penalty, in any action.

Enacted by Chapter 3, 2008 General Session

78B-3-110. Defense to civil action for damages resulting from commission of crime.

(1) A person may not recover from the victim of a crime for personal injury or property damage if:

(a) the person entered the property of the victim or the victim's family with criminal intent and the injury or damage was inflicted by the victim or occurred while the person was on the victim's property; or

(b) the person committed a crime against the victim or the victim's family, during which the damage or injury occurred.

(2) The provisions of Subsection (1) do not apply if the person can prove by clear and convincing evidence that the person's actions did not constitute a crime.

(3) Subsection (1) applies to any next-of-kin, heirs, or personal representatives of the person if the person acquires a disability or is killed.

(4) Subsections (1) and (2) do not apply if the person committing or attempting

to commit the crime has clearly retreated from the criminal activity.

(5) "Clearly retreated" means that the person committing the criminal act has fully, clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or activity.

Amended by Chapter 36, 2012 General Session

78B-3-201. Title -- Purpose.

(1) This part is known as the "Nonresident Jurisdiction Act."

(2) It is declared, as a matter of legislative policy, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who, through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

(3) The provisions of this part, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-202. Definitions.

As used in this part:

(1) The words "any person" mean any individual, firm, company, association, or corporation.

(2) The words "transaction of business within this state" mean activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses within the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-204. Effect of failure to appoint registered agent -- Service of process upon nonresident.

If a nonresident person doing business fails to appoint a registered agent within the state in accordance with Title 16, Chapter 17, Model Registered Agents Act, service of process may be made by serving any person employed by or acting as an agent for the nonresident.

Amended by Chapter 43, 2010 General Session

78B-3-205. Acts submitting person to jurisdiction.

Notwithstanding Section 16-10a-1501, any person or personal representative of the person, whether or not a citizen or resident of this state, who, in person or through an agent, does any of the following enumerated acts is subject to the jurisdiction of the

courts of this state as to any claim arising out of or related to:

(1) the transaction of any business within this state;

(2) contracting to supply services or goods in this state;

(3) the causing of any injury within this state whether tortious or by breach of warranty;

(4) the ownership, use, or possession of any real estate situated in this state;

(5) contracting to insure any person, property, or risk located within this state at the time of contracting;

(6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or

(7) the commission of sexual intercourse within this state which gives rise to a paternity suit under Title 78B, Chapter 15, Utah Uniform Parentage Act, to determine paternity for the purpose of establishing responsibility for child support.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-206. Service of process.

(1) Service of process on any party outside the state may be made pursuant to the applicable provisions of Rule 4 of the Utah Rules of Civil Procedure.

(2) Service of summons and of a copy of the complaint, if any, may also be made upon any person located without this state by any individual over 21 years of age, not a party to the action, with the same force and effect as though the summons had been personally served within this state. No order of court is required. An affidavit of the server shall be filed with the court stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether proper service has been made.

(3) Nothing contained in this section shall be construed to limit or affect the right to serve process in any other manner provided by law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-207. Only claims arising from enumerated acts may be asserted.

Only claims arising from acts enumerated in this part may be asserted against a defendant in an action in which jurisdiction over him is based upon this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-208. Default judgments.

(1) A default judgement may not be entered until the expiration of at least 30 days after service.

(2) A default judgment entered on service may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered on personal service within this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-209. When exercisable.

Subject to the applicable statute of limitations, jurisdiction established under this part may be exercised regardless of when the claim arose.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-301. Actions involving real property.

(1) Actions for the following causes involving real property shall be tried in the county in which the subject of the action, or some part, is situated:

(a) for the recovery of real property, or of an estate or interest in the property;

(b) for the determination, in any form, of the right or interest in the property;

(c) for injuries to real property;

(d) for the partition of real property; and

(e) for the foreclosure of all liens and mortgages on real property.

(2) If the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county selected is the proper county for the trial of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-302. Actions to recover fines or penalties -- Against public officers.

(1) Actions to recover fines or penalties shall be tried in the county where the cause, or some part of the cause, arose.

(2) If a fine, penalty, or forfeiture imposed by statute is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on the lake, river, or stream opposite to the place where the offense was committed.

(3) Except as otherwise provided by law, an action against a public officer or the public officer's designee shall be tried in the county where the cause arose.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-303. Actions against a county.

(1) An action against a county may be commenced and tried in the county.

(2) If the action is brought by another county, the action may be commenced and tried in any county not a party to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-304. Actions on written contracts.

An action on a contract signed in this state to perform an obligation may be commenced and tried in the following venues:

(1) If the action is to enforce an interest in real property securing a consumer's

obligation, the action may be brought only in the county where the real property is located or where the defendant resides.

(2) An action to enforce an interest other than under Subsection (1) may be brought in the county where the obligation is to be performed, the contract was signed, or in which the defendant resides.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-305. Transitory actions -- Residence of corporations.

(1) All transitory causes of action arising outside the state, except those mentioned in Section 78B-3-306, shall, if action is brought in this state, be brought and tried in the county where any defendant resides.

(2) If any such defendant is a corporation, the action may be brought and tried in any county in which the corporation has an office or place of business.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-306. Arising without this state in favor of resident.

All transitory causes of action arising outside the state in favor of residents of this state shall be brought and tried in the county where the plaintiff resides, or in the county where the principal defendant resides. If the principal defendant is a corporation, the action shall be brought in the county where the plaintiff resides or in the county where the corporation has an office or place of business.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-307. All other actions.

(1) In all other cases an action shall be tried in the county in which:

(a) the cause of action arises; or

(b) any defendant resides at the commencement of the action.

(2) If the defendant is a corporation, any county in which the corporation has its principal office or a place of business shall be considered the county in which the corporation resides.

(3) If none of the defendants resides in this state, the action may be commenced and tried in any county designated by the plaintiff in the complaint.

(4) If the defendant is about to depart from the state, the action may be tried in any county where any of the parties resides or service is had.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-308. Change of venue -- Conditions precedent.

If the county in which the action is commenced is not the proper county for the trial, the action may nevertheless be tried in the county in which it is filed, unless the defendant, at the time the answer is filed or an appearance is made, files a written motion requesting the trial be moved to the proper county.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-309. Grounds.

The court may, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had in the county, city, or precinct designated in the complaint;

(3) when the convenience of witnesses and the ends of justice would be promoted by the change;

(4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-310. Court to which transfer is to be made.

An action or proceeding which is transferred by order of the court shall be transferred to a court agreed upon by the parties. If the parties do not agree, the action shall be transferred to the nearest court where the objection or reason for transfer does not exist.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-311. Duty of clerk -- Fees and costs -- Effect on jurisdiction.

(1) When an order is made transferring an action or proceeding for trial, the court shall transmit all pleadings and papers regarding the transferred action to the court to which it is transferred.

(2) All costs and fees for the transfer and filing the papers anew shall be paid by the party at whose instance the order was made.

(3) Notwithstanding Subsection (2), if the order is made because the action was commenced in the wrong county, the costs of transfer and filing the papers anew shall be paid by the plaintiff in the action within 10 days after the issuance of the order, or the action shall be dismissed for lack of jurisdiction.

(4) The court to which an action or proceeding is transferred shall have and exercise the same jurisdiction as if the action had been originally commenced there.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-401. Title.

This part shall be known and may be cited as the "Utah Health Care Malpractice Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-402. Legislative findings and declarations -- Purpose of act.

(1) The Legislature finds and declares that the number of suits and claims for damages and the amount of judgments and settlements arising from health care has

increased greatly in recent years. Because of these increases the insurance industry has substantially increased the cost of medical malpractice insurance. The effect of increased insurance premiums and increased claims is increased health care cost, both through the health care providers passing the cost of premiums to the patient and through the provider's practicing defensive medicine because he views a patient as a potential adversary in a lawsuit. Further, certain health care providers are discouraged from continuing to provide services because of the high cost and possible unavailability of malpractice insurance.

(2) In view of these recent trends and with the intention of alleviating the adverse effects which these trends are producing in the public's health care system, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide health-related malpractice insurance while at the same time establishing a mechanism to ensure the availability of insurance in the event that it becomes unavailable from private companies.

(3) In enacting this act, it is the purpose of the Legislature to provide a reasonable time in which actions may be commenced against health care providers while limiting that time to a specific period for which professional liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-403. Definitions.

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-205.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to engage in the practice of dental hygiene as defined in Section 58-69-102.

(7) "Dentist" means a person licensed to engage in the practice of dentistry as defined in Section 58-69-102.

(8) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(9) "Future damages" includes a judgment creditor's damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering.

(10) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.

(12) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, registered nurse, licensed practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(13) "Hospital" means a public or private institution licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(14) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

(15) "Licensed Direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in Section 58-77-102.

(16) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.

(17) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(18) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

(19) "Naturopathic physician" means a person licensed to engage in the practice of naturopathic medicine as defined in Section 58-71-102.

(20) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.

(21) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(22) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(23) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(24) "Periodic payments" means the payment of money or delivery of other property to a judgment creditor at intervals ordered by the court.

(25) "Pharmacist" means a person licensed to practice pharmacy as provided in

Section 58-17b-301.

(26) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24b, Physical Therapy Practice Act.

(27) "Physical therapist assistant" means a person licensed to practice physical therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical Therapy Practice Act.

(28) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

(29) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

(30) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(31) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.

(32) "Registered nurse" means a person licensed to practice professional nursing as provided in Section 58-31b-301.

(33) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes relationships that are created as a result of adoption.

(34) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, person designated to make decisions on behalf of a patient under a medical power of attorney, or other legal agent of the patient.

(35) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.

(36) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act.

(37) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

(38) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

Amended by Chapter 104, 2013 General Session

78B-3-404. Statute of limitations -- Exceptions -- Application.

(1) A malpractice action against a health care provider shall be commenced within two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed four years after the date of the alleged act, omission, neglect, or occurrence.

(2) Notwithstanding Subsection (1):

(a) in an action where the allegation against the health care provider is that a foreign object has been wrongfully left within a patient's body, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered, the existence of the foreign object

wrongfully left in the patient's body, whichever first occurs; or

(b) in an action where it is alleged that a patient has been prevented from discovering misconduct on the part of a health care provider because that health care provider has affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred unless commenced within one year after the plaintiff or patient discovers, or through the use of reasonable diligence, should have discovered the fraudulent concealment, whichever first occurs.

Amended by Chapter 384, 2012 General Session

78B-3-405. Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

(1) In all malpractice actions against health care providers as defined in Section 78B-3-403 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.

(2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits except as specified in Subsection (5).

(3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(4) To preserve subrogation rights for amounts paid or received prior to

settlement or judgment, a provider of collateral sources shall, at least 30 days before settlement or trial of the action, serve a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state:

(a) the name and address of the provider of collateral sources;

(b) the amount of collateral sources paid;

(c) the names and addresses of all persons who received payment; and

(d) the items and purposes for which payment has been made.

(5) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider the evidence in determining the amount of damages awarded to a plaintiff for future expenses.

(6) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title 26, Chapter 19, Medical Benefits Recovery Act, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section.

(7) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-406. Failure to obtain informed consent -- Proof required of patient -- Defenses -- Consent to health care.

(1) When a person submits to health care rendered by a health care provider, it is presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done. For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(a) that a provider-patient relationship existed between the patient and health care provider;

(b) the health care provider rendered health care to the patient;

(c) the patient suffered personal injuries arising out of the health care rendered;

(d) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(e) the patient was not informed of the substantial and significant risk;

(f) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent; and

(g) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal

injuries alleged to have arisen from said health care.

(3) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or his representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained his condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or his representative.

(4) The written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing evidence that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) This act may not be construed to prevent any person 18 years of age or over from refusing to consent to health care for his own person upon personal or religious grounds.

(6) Except as provided in Section 76-7-304.5, the following persons are authorized and empowered to consent to any health care not prohibited by law:

(a) any parent, whether an adult or a minor, for the parent's minor child;

(b) any married person, for a spouse;

(c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under that person's care and any guardian for the guardian's ward;

(d) any person 18 years of age or over for that person's parent who is unable by reason of age, physical or mental condition, to provide such consent;

(e) any patient 18 years of age or over;

(f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;

(g) in the absence of a parent, any adult for the adult's minor brother or sister; and

(h) in the absence of a parent, any grandparent for the grandparent's minor grandchild.

(7) A person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act may not be subject to civil liability.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-407. Limitation on actions against health care providers when parent or guardian refuses to consent to health care of child.

(1) A malpractice action against a health care provider may not be brought on the basis of the consequences resulting from the refusal of a child's parent or guardian to consent to the child's health care, if:

(a) the health care is recommended by the health care provider;

(b) the parent or guardian is provided with sufficient information to make an informed decision regarding the recommendation of the health care provider; and

(c) the consent of the parent or guardian is required by law before the health care may be administered.

(2) The sole purpose of this section is to prohibit a malpractice action against a health care provider under the circumstances set forth by this section. This section may not be construed to:

(a) create a new cause of action;

(b) expand an existing cause of action;

(c) impose a new duty on a health care provider; or

(d) expand an existing duty of a health care provider.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-408. Writing required as basis for liability for breach of guarantee, warranty, contract, or assurance of result.

Liability may not be imposed upon any health care provider on the basis of an alleged breach of guarantee, warranty, contract, or assurance of result to be obtained from any health care rendered unless the guarantee, warranty, contract, or assurance is set forth in writing and signed by the health care provider or an authorized agent of the provider.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-409. Ad damnum clause prohibited in complaint.

A dollar amount may not be specified in the prayer of a complaint filed in a malpractice action against a health care provider. The complaint shall merely pray for such damages as are reasonable in the circumstances.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-410. Limitation of award of noneconomic damages in malpractice actions.

(1) In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience.

The amount of damages awarded for noneconomic loss may not exceed:

(a) for a cause of action arising before July 1, 2001, $250,000;

(b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to $400,000;

(c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the $400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2); and

(d) for a cause of action arising on or after May 15, 2010, $450,000.

(2) (a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.

(b) By July 15 of each year until July 1, 2009, the state treasurer shall:

(i) certify the inflation-adjusted limit calculated under this Subsection (2); and

(ii) inform the Administrative Office of the Courts of the certified limit.

(c) The amount resulting from Subsection (2)(a) shall:

(i) be rounded to the nearest $10,000; and

(ii) apply to a cause of action arising on or after the date the annual adjustment is made.

(3) As used in this section, "inflation" means the seasonally adjusted consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) The limit under Subsection (1) does not apply to awards of punitive damages.

Amended by Chapter 97, 2010 General Session

78B-3-411. Limitation on attorney's contingency fee in malpractice action.

(1) In any malpractice action against a health care provider as defined in Section 78B-3-403, an attorney may not collect a contingent fee for representing a client seeking damages in connection with or arising out of personal injury or wrongful death caused by the negligence of another which exceeds 33-1/3% of the amount recovered.

(2) This limitation applies regardless of whether the recovery is by settlement, arbitration, judgment, or whether appeal is involved.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-412. Notice of intent to commence action.

(1) A malpractice action against a health care provider may not be initiated unless and until the plaintiff:

(a) gives the prospective defendant or his executor or successor, at least 90 days' prior notice of intent to commence an action; and

(b) except for an action against a dentist, the plaintiff receives a certificate of compliance from the division in accordance with Section 78B-3-418.

(2) The notice shall include:

(a) a general statement of the nature of the claim;

(b) the persons involved;

(c) the date, time, and place of the occurrence;

(d) the circumstances surrounding the claim;

(e) specific allegations of misconduct on the part of the prospective defendant; and

(f) the nature of the alleged injuries and other damages sustained.

(3) Notice may be in letter or affidavit form executed by the plaintiff or his attorney. Service shall be accomplished by persons authorized and in the manner prescribed by the Utah Rules of Civil Procedure for the service of the summons and complaint in a civil action or by certified mail, return receipt requested, in which case notice shall be considered served on the date of mailing.

(4) Notice shall be served within the time allowed for commencing a malpractice action against a health care provider. If the notice is served less than 90 days prior to the expiration of the applicable time period, the time for commencing the malpractice action against the health care provider shall be extended to 120 days from the date of service of notice.

(5) This section shall, for purposes of determining its retroactivity, not be construed as relating to the limitation on the time for commencing any action, and shall apply only to causes of action arising on or after April 1, 1976. This section shall not apply to third party actions, counterclaims or crossclaims against a health care provider.

Amended by Chapter 97, 2010 General Session

78B-3-413. Professional liability insurance coverage for providers -- Insurance commissioner may require joint underwriting authority.

(1) The commissioner may, after a public hearing, find that professional liability insurance coverage for health care providers is not readily available in the voluntary market in a specific part of this state, and that the public interest requires that action be taken.

(2) The commissioner may promulgate rules and implement plans to provide insurance coverage through all insurers issuing professional liability policies and individual and group accident and sickness policies providing medical, surgical or hospital expense coverage on either a prepaid or an expense incurred basis, including personal injury protection and medical expense coverage issued incidental to liability insurance policies.

Amended by Chapter 146, 2009 General Session

78B-3-414. Periodic payment of future damages in malpractice actions.

(1) In any malpractice action against a health care provider, as defined in Section 78B-3-403, the court shall, at the request of any party, order that future damages which equal or exceed $100,000, less amounts payable for attorney fees and other costs which are due at the time of judgment, shall be paid by periodic payments rather than by a lump sum payment.

(2) In rendering a judgment which orders the payment of future damages by periodic payments, the court shall order periodic payments to provide a fair correlation between the sustaining of losses and the payment of damages.

(a) Lost future earnings shall be paid over the judgment creditor's work life expectancy.

(b) The court shall also order, when appropriate, that periodic payments increase at a fixed rate, equal to the rate of inflation which the finder of fact used to determine the amount of future damages, or as measured by the most recent Consumer Price Index applicable to Utah for all goods and services.

(c) The present cash value of all periodic payments shall equal the fact finder's award of future damages, less any amount paid for attorney fees and costs.

(d) The present cash value of periodic payments shall be determined by discounting the total amount of periodic payments projected over the judgment creditor's life expectancy, by the rate of interest which the finder of fact used to reduce the amount of future damages to present value, or the rate of interest available at the time of trial on one year U.S. Government Treasury Bills.

(3) Before periodic payments of future damages may be ordered, the court shall require a judgment debtor to post security which assures full payment of those damages. Security for payment of a judgment of periodic payments may be in one or more of the following forms:

(a) a bond executed by a qualified insurer;

(b) an annuity contract executed by a qualified insurer;

(c) evidence of applicable and collectable liability insurance with one or more qualified insurers;

(d) an agreement by one or more qualified insurers to guarantee payment of the judgment; or

(e) any other form of security approved by the court.

(4) Security which complies with this section may also serve as a supersedeas bond, where one is required.

(5) A judgment which orders payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Those payments may only be modified in the event of the death of the judgment creditor.

(6) If the court finds that the judgment debtor, or the assignee of his obligation to make periodic payments, has failed to make periodic payments as ordered by the court, it shall, in addition to the required periodic payments, order the judgment debtor or his assignee to pay the judgment creditor all damages caused by the failure to make payments, including court costs and attorney fees.

(7) The obligation to make periodic payments for all future damages, other than damages for loss of future earnings, shall cease upon the death of the judgment creditor. Damages awarded for loss of future earnings may not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his death. In that case the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(8) If security is posted in accordance with Subsection (3), and approved by a final judgment entered under this section, the judgment is considered to be satisfied,

and the judgment debtor on whose behalf the security is posted shall be discharged.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-415. Actions under Utah Governmental Immunity Act.

The provisions of this part shall apply to malpractice actions against health care providers which are brought under the Utah Governmental Immunity Act if applicable. This part may not affect the requirements for filing notices of claims, times for commencing actions and limitations on amounts recoverable under the Utah Governmental Immunity Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-416. Division to provide panel -- Exemption -- Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license fees.

(1) (a) The division shall provide a hearing panel in alleged medical liability cases against health care providers as defined in Section 78B-3-403, except dentists.

(b) (i) The division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care.

(ii) The division may establish rules necessary to administer the process and procedures related to prelitigation hearings and the conduct of prelitigation hearings in accordance with Sections 78B-3-416 through 78B-3-420.

(c) The proceedings are informal, nonbinding, and are not subject to Title 63G, Chapter 4, Administrative Procedures Act, but are compulsory as a condition precedent to commencing litigation.

(d) Proceedings conducted under authority of this section are confidential, privileged, and immune from civil process.

(2) (a) The party initiating a medical liability action shall file a request for prelitigation panel review with the division within 60 days after the service of a statutory notice of intent to commence action under Section 78B-3-412.

(b) The request shall include a copy of the notice of intent to commence action. The request shall be mailed to all health care providers named in the notice and request.

(3) (a) The filing of a request for prelitigation panel review under this section tolls the applicable statute of limitations until the later of:

(i) 60 days following the division's issuance of:

(A) an opinion by the prelitigation panel; or

(B) a certificate of compliance under Section 78B-3-418; or

(ii) the expiration of the time for holding a hearing under Subsection (3)(b)(ii).

(b) The division shall:

(i) send any opinion issued by the panel to all parties by regular mail; and

(ii) complete a prelitigation hearing under this section within:

(A) 180 days after the filing of the request for prelitigation panel review; or

(B) any longer period as agreed upon in writing by all parties to the review.

(c) If the prelitigation hearing has not been completed within the time limits established in Subsection (3)(b)(ii), the claimant shall:

(i) file an affidavit of merit under the provisions of Section 78B-3-423; or

(ii) file an affidavit with the division within 180 days of the request for pre-litigation review, in accordance with Subsection (3)(d), alleging that the respondent has failed to reasonably cooperate in scheduling the hearing.

(d) If the claimant files an affidavit under Subsection (3)(c)(ii):

(i) within 15 days of the filing of the affidavit under Subsection (3)(c)(ii), the division shall determine whether either the respondent or the claimant failed to reasonably cooperate in the scheduling of a pre-litigation hearing; and

(ii) (A) if the determination is that the respondent failed to reasonably cooperate in the scheduling of a hearing, and the claimant did not fail to reasonably cooperate, the division shall, issue a certificate of compliance for the claimant in accordance with Section 78B-3-418; or

(B) if the division makes a determination other than the determination in Subsection (3)(d)(ii)(A), the claimant shall file an affidavit of merit in accordance with Section 78B-3-423, within 30 days of the determination of the division under this Subsection (3).

(e) (i) The claimant and any respondent may agree by written stipulation that no useful purpose would be served by convening a prelitigation panel under this section.

(ii) When the stipulation is filed with the division, the division shall within 10 days after receipt issue a certificate of compliance under Section 78B-3-418, as it concerns the stipulating respondent, and stating that the claimant has complied with all conditions precedent to the commencement of litigation regarding the claim.

(4) The division shall provide for and appoint an appropriate panel or panels to hear complaints of medical liability and damages, made by or on behalf of any patient who is an alleged victim of medical liability. The panels are composed of:

(a) one member who is a resident lawyer currently licensed and in good standing to practice law in this state and who shall serve as chairman of the panel, who is appointed by the division from among qualified individuals who have registered with the division indicating a willingness to serve as panel members, and a willingness to comply with the rules of professional conduct governing lawyers in the state, and who has completed division training regarding conduct of panel hearings;

(b) (i) one member who is a licensed health care provider listed under Section 78B-3-403, who is practicing and knowledgeable in the same specialty as the proposed defendant, and who is appointed by the division in accordance with Subsection (5); or

(ii) in claims against only hospitals or their employees, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, and who is appointed by the division; and

(c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care provider, and who is a responsible citizen of the state, selected and appointed by the division from among individuals who have completed division training with respect to panel hearings.

(5) (a) Each person listed as a health care provider in Section 78B-3-403 and practicing under a license issued by the state, is obligated as a condition of holding that

license to participate as a member of a medical liability prelitigation panel at reasonable times, places, and intervals, upon issuance, with advance notice given in a reasonable time frame, by the division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

(b) A licensee may be excused from appearance and participation as a panel member upon the division finding participation by the licensee will create an unreasonable burden or hardship upon the licensee.

(c) A licensee whom the division finds failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000.

(d) A licensee whom the division finds intentionally or repeatedly failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000, and is guilty of unprofessional conduct.

(e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the Physicians Education Fund created in Section 58-67a-1.

(6) Each person selected as a panel member shall certify, under oath, that he has no bias or conflict of interest with respect to any matter under consideration.

(7) A member of the prelitigation hearing panel may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) In addition to the actual cost of administering the licensure of health care providers, the division may set license fees of health care providers within the limits established by law equal to their proportionate costs of administering prelitigation panels.

(b) The claimant bears none of the costs of administering the prelitigation panel except under Section 78B-3-420.

Amended by Chapter 97, 2010 General Session
Amended by Chapter 286, 2010 General Session

78B-3-417. Proceedings -- Authority of panel -- Rights of parties to proceedings.

(1) No record of the proceedings is required and all evidence, documents, and exhibits are returned to the parties or witnesses who provided the evidence, documents, and exhibits at the end of the proceedings upon the request of the parties or witnesses who provided the evidence.

(2) The division may issue subpoenas for medical records directly related to the claim of medical liability in accordance with division rule and in compliance with the following:

(a) the subpoena shall be prepared by the requesting party in proper form for

issuance by the division; and

(b) the subpoena shall be accompanied by:

(i) an affidavit prepared by the person requesting the subpoena attesting to the fact the medical record subject to subpoena is believed to be directly related to the medical liability claim to which the subpoena is related; or

(ii) by a written release for the medical records to be provided to the person requesting the subpoena, signed by the individual who is the subject of the medical record or by that individual's guardian or conservator.

(3) Per diem reimbursement to panel members and expenses incurred by the panel in the conduct of prelitigation panel hearings shall be paid by the division. Expenses related to subpoenas are paid by the requesting party, including witness fees and mileage.

(4) The proceedings are informal and formal rules of evidence are not applicable. There is no discovery or perpetuation of testimony in the proceedings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(5) (a) A party is entitled to attend, personally or with counsel, and participate in the proceedings, except upon special order of the panel and unanimous agreement of the parties. The proceedings are confidential and closed to the public.

(b) No party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects.

(c) Communications between the panel and the parties, except the testimony of the parties on the merits of the dispute, are disclosed to all other parties.

(6) The division shall appoint a panel to consider the claim and set the matter for panel review as soon as practicable after receipt of a request.

(7) Parties may be represented by counsel in proceedings before a panel.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-418. Decision and recommendations of panel -- No judicial or other review.

(1) (a) The panel shall issue an opinion and the division shall issue a certificate of compliance with the pre-litigation hearing requirements of this part in accordance with this section.

(b) A certificate of compliance issued in accordance with this section is proof that the claimant has complied with all conditions precedent under this part prior to the commencement of litigation as required in Subsection 78B-3-412(1).

(c) (i) Notwithstanding any other provision of this part, any party in a medical malpractice action or arbitration hearing may request a prelitigation panel review as to a health care provider and obtain a certificate of compliance for that specific, individual health care provider for the purpose of allocating fault to that health care provider. A party in a medical malpractice action or arbitration hearing may not attempt to allocate fault to any health care provider unless a certificate of compliance has been issued in accordance with this section for that specific, individual health care provider. A health

care provider exempted from the requirement of a prelitigation hearing by statute or an arbitration agreement, may nevertheless be joined in a prelitigation hearing to satisfy the requirements of this section. Participation in a prelitigation hearing may not waive any right to enforce an arbitration agreement.

(ii) The party making the claim against, or seeking to allocate fault to, a health care provider is required to seek and obtain the certificate of compliance required by this Subsection (1)(c).

(2) (a) The panel shall render its opinion in writing not later than 30 days after the end of the proceedings, and determine on the basis of the evidence whether:

(i) each claim against each health care provider has merit or has no merit; and

(ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) There is no judicial or other review or appeal of the panel's decision or recommendations.

(3) The division shall issue a certificate of compliance to the claimant, for each respondent named in the intent to file a claim under this part, if:

(a) for a named respondent, the panel issues an opinion of merit under Subsections (2)(a)(i) and (ii);

(b) for a named respondent, the claimant files an affidavit of merit in accordance with Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either Subsection (2)(a)(i) or (ii);

(c) the claimant has complied with the provisions of Subsections 78B-3-416(3)(c) and (d); or

(d) the parties submitted a stipulation under Subsection 78B-3-416(3)(e).

Amended by Chapter 275, 2013 General Session

78B-3-419. Evidence of proceedings not admissible in subsequent action -- Panelist may not be compelled to testify -- Immunity of panelist from civil liability -- Information regarding professional conduct.

(1) Evidence of the proceedings conducted by the medical review panel and its results, opinions, findings, and determinations are not admissible as evidence in any civil action or arbitration proceeding subsequently brought by the claimant against any respondent and are not reportable to any health care facility or health care insurance carrier as a part of any credentialing process.

(2) No panelist may be compelled to testify in a civil action subsequently filed with regard to the subject matter of the panel's review. A panelist has immunity from civil liability arising from participation as a panelist and for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this section.

(3) Nothing in this chapter may be interpreted to prohibit the division from considering any information contained in a statutory notice of intent to commence action, request for prelitigation panel review, or written findings of a panel with respect to the division's determining whether a licensee engaged in unprofessional or unlawful conduct.

Amended by Chapter 275, 2013 General Session

78B-3-420. Proceedings considered a binding arbitration hearing upon written agreement of parties -- Compensation to members of panel.

Upon written agreement by all parties, the proceeding may be considered a binding arbitration hearing and proceed under Title 78B, Chapter 11, Utah Uniform Arbitration Act, except for the selection of the panel, which is done as set forth in Subsection 78B-3-416(4). If the proceeding is considered an arbitration proceeding, the parties are equally responsible for compensation to the members of the panel for services rendered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-421. Arbitration agreements.

(1) After May 2, 1999, for a binding arbitration agreement between a patient and a health care provider to be validly executed or, if the requirements of this Subsection (1) have not been previously met on at least one occasion, renewed:

(a) the patient shall be given, in writing, the following information on:

(i) the requirement that the patient must arbitrate a claim instead of having the claim heard by a judge or jury;

(ii) the role of an arbitrator and the manner in which arbitrators are selected under the agreement;

(iii) the patient's responsibility, if any, for arbitration-related costs under the agreement;

(iv) the right of the patient to decline to enter into the agreement and still receive health care if Subsection (3) applies;

(v) the automatic renewal of the agreement each year unless the agreement is canceled in writing before the renewal date;

(vi) the right of the patient to have questions about the arbitration agreement answered;

(vii) the right of the patient to rescind the agreement within 10 days of signing the agreement; and

(viii) the right of the patient to require mediation of the dispute prior to the arbitration of the dispute;

(b) the agreement shall require that:

(i) except as provided in Subsection (1)(b)(ii), a panel of three arbitrators shall be selected as follows:

(A) one arbitrator collectively selected by all persons claiming damages;

(B) one arbitrator selected by the health care provider; and

(C) a third arbitrator:

(I) jointly selected by all persons claiming damages and the health care provider; or

(II) if both parties cannot agree on the selection of the third arbitrator, the other two arbitrators shall appoint the third arbitrator from a list of individuals approved as arbitrators by the state or federal courts of Utah; or

(ii) if both parties agree, a single arbitrator may be selected;

(iii) all parties waive the requirement of Section 78B-3-416 to appear before a hearing panel in a malpractice action against a health care provider;

(iv) the patient be given the right to rescind the agreement within 10 days of signing the agreement;

(v) the term of the agreement be for one year and that the agreement be automatically renewed each year unless the agreement is canceled in writing by the patient or health care provider before the renewal date;

(vi) the patient has the right to retain legal counsel;

(vii) the agreement only apply to:

(A) an error or omission that occurred after the agreement was signed, provided that the agreement may allow a person who would be a proper party in court to participate in an arbitration proceeding;

(B) the claim of:

(I) a person who signed the agreement;

(II) a person on whose behalf the agreement was signed under Subsection (6); and

(III) the unborn child of the person described in this Subsection (1)(b)(vii)(B), for 12 months from the date the agreement is signed; and

(C) the claim of a person who is not a party to the contract if the sole basis for the claim is an injury sustained by a person described in Subsection (1)(b)(vii)(B); and

(c) the patient shall be verbally encouraged to:

(i) read the written information required by Subsection (1)(a) and the arbitration agreement; and

(ii) ask any questions.

(2) When a medical malpractice action is arbitrated, the action shall:

(a) be subject to Chapter 11, Utah Uniform Arbitration Act; and

(b) include any one or more of the following when requested by the patient before an arbitration hearing is commenced:

(i) mandatory mediation;

(ii) retention of the jointly selected arbitrator for both the liability and damages stages of an arbitration proceeding if the arbitration is bifurcated; and

(iii) the filing of the panel's award of damages as a judgement against the provider in the appropriate district court.

(3) Notwithstanding Subsection (1), a patient may not be denied health care on the sole basis that the patient or a person described in Subsection (6) refused to enter into a binding arbitration agreement with a health care provider.

(4) A written acknowledgment of having received a written explanation of a binding arbitration agreement signed by or on behalf of the patient shall be a defense to a claim that the patient did not receive a written explanation of the agreement as required by Subsection (1) unless the patient:

(a) proves that the person who signed the agreement lacked the capacity to do so; or

(b) shows by clear and convincing evidence that the execution of the agreement was induced by the health care provider's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) The requirements of Subsection (1) do not apply to a claim governed by a

binding arbitration agreement that was executed or renewed before May 3, 1999.

(6) A legal guardian or a person described in Subsection 78B-3-406(6), except a person temporarily standing in loco parentis, may execute or rescind a binding arbitration agreement on behalf of a patient.

(7) This section does not apply to any arbitration agreement that is subject to the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

Amended by Chapter 189, 2014 General Session

78B-3-422. Evidence of disclosures -- Civil proceedings -- Unanticipated outcomes -- Medical care.

(1) As used in this section:

(a) "Defendant" means the defendant in a malpractice action against a health care provider.

(b) "Health care provider" includes an agent of a health care provider.

(c) "Patient" includes any person associated with the patient.

(2) In any civil action or arbitration proceeding relating to an unanticipated outcome of medical care, any unsworn statement, affirmation, gesture, or conduct made to the patient by the defendant shall be inadmissible as evidence of an admission against interest or of liability if it:

(a) expresses:

(i) apology, sympathy, commiseration, condolence, or compassion; or

(ii) a general sense of benevolence; or

(b) describes:

(i) the sequence of events relating to the unanticipated outcome of medical care;

(ii) the significance of events; or

(iii) both.

(3) Except as provided in Subsection (2), this section does not alter any other law or rule that applies to the admissibility of evidence in a medical malpractice action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-423. Affidavit of merit.

(1) (a) Before a claimant may receive a certificate of compliance under Sections 78B-3-416 and 78B-3-418, a claimant shall file an affidavit of merit under this section:

(i) within 60 days of the date of the panel's opinion, if the claimant receives a finding from the pre-litigation panel in accordance with Section 78B-3-418 of non-meritorious for either:

(A) the claim of breach of applicable standard of care; or

(B) that the breach of care was the proximate cause of injury;

(ii) within 60 days of the expiration of the time limit in Subsection 78B-3-416(3)(b)(ii), if a pre-litigation hearing is not held within the time limits under Subsection 78B-3-416(3)(b)(ii); or

(iii) within 30 days of the division's determination under Subsection 78B-3-416(3)(d)(ii)(B), if the division makes a determination under Subsection 78B-3-416(3)(d)(ii)(B).

(b) A claimant who is required to file an affidavit of merit under Subsection (1)(a) shall:

(i) file the affidavit of merit with the division; and

(ii) serve each defendant with the affidavit of merit in accordance with Subsection 78B-3-412(3).

(2) The affidavit of merit shall:

(a) be executed by the claimant's attorney or the claimant if the claimant is proceeding pro se, stating that the affiant has consulted with and reviewed the facts of the case with a health care provider who has determined after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of a medical liability action; and

(b) include an affidavit signed by a health care provider who meets the requirements of Subsection (3), which states that in the health care provider's opinion:

(i) there are reasonable grounds to believe that the applicable standard of care was breached;

(ii) the breach was a proximate cause of the injury claimed in the notice of intent to commence action; and

(iii) the reasons for the health care provider's opinion.

(c) The statement required in Subsection (2)(b)(i) shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection 78B-3-418(2)(a)(i).

(3) A health care provider who signs the affidavit of merit under Subsection (2) shall:

(a) if none of the respondents is a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state in the same specialty or of the same class of license as the respondents; or

(b) if at least one of the respondents is a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state to practice medicine in all its branches.

(4) A claimant's attorney or claimant may obtain up to a 60-day extension to file the affidavit of merit if:

(a) the claimant or the claimant's attorney submits a signed affidavit for extension with notice to the division attesting to the fact that the claimant is unable to submit an affidavit of merit as required by this section because:

(i) a statute of limitations would impair the action; and

(ii) the affidavit of merit could not be obtained before the expiration of the statute of limitations; and

(b) the claimant or claimant's attorney submits the affidavit for extension to each named respondent in accordance with Subsection 78B-3-412(3) no later than 60 days after the date specified in Subsection (1)(a)(i).

(5) (a) A claimant or claimant's attorney who submits allegations in an affidavit of merit that are found to be without reasonable cause and untrue, based on

information available to the plaintiff at the time the affidavit was submitted to the division, is liable to the defendant for the payment of reasonable expenses and reasonable attorney fees actually incurred by the defendant or the defendant's insurer.

(b) An affidavit of merit is not admissible, and cannot be used for any purpose, in a subsequent lawsuit based on the claim that is the subject of the affidavit, except for the purpose of establishing the right to recovery under Subsection (5)(c).

(c) A court, or arbitrator under Section 78B-3-421, may award costs and attorney fees under Subsection (5)(a) if the defendant files a motion for costs and attorney fees within 60 days of the judgment or dismissal of the action in favor of the defendant. The person making a motion for attorney fees and costs may depose and examine the health care provider who prepared the affidavit of merit.

(6) If a claimant or the claimant's attorney does not file an affidavit of merit as required by this section, the division may not issue a certificate of compliance for the claimant and the malpractice action shall be dismissed by the court.

(7) This section applies to a cause of action that arises on or after July 1, 2010.

Enacted by Chapter 97, 2010 General Session

78B-3-424. Limitation of liability for ostensible agent.

(1) For purposes of this section:

(a) "Agent" means a person who is an "employee," "worker," or "operative," as defined in Section 34A-2-104, of a health care provider.

(b) "Ostensible agent" means a person:

(i) who is not an agent of the health care provider; and

(ii) who the plaintiff reasonably believes is an agent of the health care provider because the health care provider intentionally, or as a result of a lack of ordinary care, caused the plaintiff to believe that the person was an agent of the health care provider.

(2) A health care provider named as a defendant in a medical malpractice action is not liable for the acts or omissions of an ostensible agent if:

(a) the ostensible agent has privileges with the health care provider, but is not an agent of the healthcare provider;

(b) the health care provider has by policy or practice, ensured that a person providing professional services has insurance of a type and amount required, if any is required, by the rules or regulations as established in:

(i) medical staff by-laws for a health care facility; or

(ii) other health care facility contracts, indemnification agreements, rules or regulations;

(c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or omission of the ostensible agent; and

(d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to commence an action, the healthcare provider, within 60 days of the service of the notice of intent to commence an action, lists each person identified by the plaintiff who the provider claims is not an agent or ostensible agent of the provider.

(3) This section applies to a cause of action that arises on or after July 1, 2010.

Enacted by Chapter 97, 2010 General Session

78B-3-425. Prohibition on cause of action for negligent credentialing.

It is the policy of this state that the question of negligent credentialing, as applied to health care providers in malpractice suits, is not recognized as a cause of action.

Enacted by Chapter 430, 2011 General Session

78B-3-501. Definitions.

As used in this part, "therapist" means:

(1) a psychiatrist licensed to practice medicine under Section 58-67-301, Utah Medical Practice Act or under Section 58-68-301, Utah Osteopathic Medical Practice Act;

(2) a psychologist licensed to practice psychology under Section 58-61-301;

(3) a marriage and family therapist licensed to practice marriage and family therapy under Section 58-60-304;

(4) a social worker licensed to practice social work under Section 58-60-204;

(5) a psychiatric and mental health nurse specialist licensed to practice advanced psychiatric nursing under Title 58, Chapter 31b, Nurse Practice Act; and

(6) a clinical mental health counselor licensed to practice professional counseling under Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act.

Amended by Chapter 179, 2012 General Session

78B-3-502. Limitation of therapist's duty to warn.

(1) A therapist has no duty to warn or take precautions to provide protection from any violent behavior of his client or patient, except when that client or patient communicated to the therapist an actual threat of physical violence against a clearly identified or reasonably identifiable victim. That duty shall be discharged if the therapist makes reasonable efforts to communicate the threat to the victim, and notifies a law enforcement officer or agency of the threat.

(2) An action may not be brought against a therapist for breach of trust or privilege, or for disclosure of confidential information, based on a therapist's communication of information to a third party in an effort to discharge his duty in accordance with Subsection (1).

(3) This section does not limit or effect a therapist's duty to report child abuse or neglect in accordance with Section 62A-4a-403.

Amended by Chapter 146, 2009 General Session

78B-3-601. Purpose.

(1) The purpose of this part is to facilitate the compensation of injured parties from financial protection funds established pursuant to the Price Anderson Act, 42 U.S.C. Sec. 2210.

(2) Nothing in this part may be construed to impose liability for harm from nuclear incidents for which financial protection is not afforded under the Price Anderson Act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-602. Definitions.

As used in this part:

(1) "Harm" means:

(a) personal injury, death, or illness, except an injury, death, or illness that is a basis for a claim under either a state or federal workmen's compensation act by an employee of a person liable pursuant to Section 78B-3-603;

(b) damage to, destruction of, or loss of the use of property other than property at the situs of and used in connection with the activity giving rise to a nuclear incident;

(c) economic loss due to:

(i) damage to or loss of the use of property; or

(ii) environmental degradation; or

(d) expenses reasonably incurred by the state, its political subdivisions, or the agencies of either in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident, including, but not limited to, precautionary evacuations, emergency response measures, and, after reasonable opportunity for performance of cleanup measures by persons liable pursuant to Section 78B-3-603, decontamination or other clean-up measures. These expenses must be documented by the state, its political subdivisions, or agencies of either.

(2) "Nuclear incident" means an incident which does not arise from an act of war and involves the release of nuclear material which results in personal injury, loss of use of property, or damage due to the radioactive, toxic, explosive, or other hazardous properties of the nuclear material.

(3) "Nuclear material" means radioactive material used or handled in connection with:

(a) a utilization facility or production facility licensed by the United States Nuclear Regulatory Commission in accordance with 42 U.S.C. Secs. 2133 or 2134;

(b) a utilization or production facility constructed or operated under a contract for the benefit of the United States where there is a risk of a substantial nuclear incident as determined by the United States Department of Energy or the Nuclear Regulatory Commission; or

(c) disposal, storage, and other activities undertaken pursuant to the Nuclear Waste Policy Act, 42 U.S.C. Secs. 10101 through 10225.

(4) "Radioactive material" means:

(a) source material as defined in 42 U.S.C. Sec. 2014 (z);

(b) special nuclear material as defined in 42 U.S.C. Sec. 2014 (aa); or

(c) by-product material as defined in 42 U.S.C. Sec. 2014 (e).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-603. Liability imposed and limitations -- Defenses -- Limitations on damages.

(1) Except as provided in this section, any person who owns, holds under license, transports, ships, stores, or disposes of nuclear material is liable, without

regard to the conduct of any other person, for harm from nuclear incidents arising in connection with or resulting from such ownership, transportation, shipping, storage, or disposal.

(2) Except as provided in this section, any person who owns, designs, constructs, operates, or maintains facilities, structures, vehicles, or equipment used for handling, transportation, shipment, storage, or disposal of nuclear material is liable, without regard to the conduct of any other person, for harm from nuclear incidents arising in connection with or resulting from such ownership, design, construction, operation, and maintenance.

(3) Liability established by this part shall only be imposed if a court of competent jurisdiction finds that:

(a) the nuclear incident which is the basis for the suit is covered by existing financial protection undertaken pursuant to 42 U.S.C. Sec. 2210; and

(b) a person who is liable under this part is a person indemnified as defined in 42 U.S.C. Sec. 2014.

(4) Immunity of the state, its political subdivisions, or the agencies of either from suit are only waived with respect to a suit arising from a nuclear incident:

(a) in accordance with Title 63G, Chapter 7, Governmental Immunity Act of Utah; or

(b) when brought by a person suffering harm.

(5) The conduct of the person suffering harm is not a defense to liability, except that this section does not preclude any defense based on:

(a) the claimant's knowing failure to mitigate damages related to any injury or damage to the claimant or the claimant's property; or

(b) an incident involving nuclear material that is knowingly and wrongfully caused by the claimant.

(6) A person may not collect punitive or exemplary damages under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-604. Determination of causation -- Compensation allowed.

(1) Causation of radiological injury from a nuclear incident shall be determined by the trier of fact, taking into account epidemiological studies, statistical probabilities, and other pertinent medical and scientific evidence.

(2) A claimant under this part shall be entitled to full compensation of the claimant's radiological injuries if the trier of fact determines that it is more likely than not that the claimant's injuries resulted from the nuclear incident.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-701. Definitions.

As used in this part:

(1) "Disability" has the same meaning as defined in Section 62A-5b-102.

(2) "Search and rescue dog" means a dog:

(a) with documented training to locate persons who are:

(i) lost, missing, or injured; or

(ii) trapped under debris as the result of a natural or man-made event; and

(b) affiliated with an established search and rescue dog organization.

(3) "Service animal" means:

(a) a service animal, as defined in Section 62A-5b-102; or

(b) a search and rescue dog.

Amended by Chapter 110, 2009 General Session

78B-3-702. Damages recoverable for harm to or theft of service animal.

(1) A person with a disability who uses a service animal, or the owner of a service animal has a cause of action for economic and noneconomic damages against:

(a) any person who steals or, without provocation, attacks the service animal; and

(b) the owner or keeper of any animal that without provocation attacks a service animal due to the owner's or keeper's negligent failure to exercise sufficient control over the animal to prevent the attack.

(2) The action authorized by this section maybe brought by a person with a disability who uses the service animal, or the owner of the service animal.

(3) The measure of economic damages in an action brought under Subsection (1) regarding a service animal that is not returned or is killed or injured due to an unprovoked attack so that the service animal is unable to function again as a service animal includes:

(a) the replacement value of an equally trained service animal, without any differentiation for the age or experience of the animal; and

(b) costs and expenses incurred by the person with a disability or the owner, including:

(i) costs of temporary replacement assistance services, whether provided by another service animal or by a person;

(ii) reasonable costs incurred in efforts to recover a stolen service animal; and

(iii) court and attorney costs incurred in bringing an action under this section.

(4) If the unprovoked attack on a service animal results in injuries from which the animal recovers so it is able to again function as a service animal for the person with a disability, or if the theft of the service animal results in the recovery of the service animal and the animal is again able to function as a service animal for the person with a disability, the measure of economic damages is the costs and expenses incurred by the person with a disability or the owner as a result of the theft of or injury to the service animal, and includes:

(a) veterinary medical expenses;

(b) costs of temporary replacement assistance services, whether provided by another service animal or a person;

(c) costs incurred in recovering the service animal, such as a reward; and

(d) court and attorney costs incurred in bringing an action under this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-703. Limitation on cause of action.

A cause of action does not exist under this section if the person with a disability who uses the service animal or the person having custody or supervision of the service animal was committing a civil or criminal trespass at the time of the:

(1) theft of, or the chasing or harassment of the service animal by a person who owns or exercises control over the property upon which the trespass is committed; or

(2) attack upon, or the chasing or harassment of a service animal by an animal that is currently kept or maintained on the property where the trespass is committed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-801. Cause of action for death or addiction caused by use or ingestion of illegal controlled substances -- Damages.

(1) As used in this section, "substance" means any illegal controlled substance under Title 58, Chapter 37, Utah Controlled Substance Act.

(2) A person is subject to a civil action by a person or an estate under Subsection (3) who:

(a) unlawfully provided to or administered to the deceased person or the addicted person any substance that caused or contributed to the person's addiction or to the death of the deceased person; or

(b) unlawfully provided any substance to any person in the chain of transfer of the substance that connects directly to the person who subsequently provided or administered the illegal controlled substance to the addicted person or to the deceased person under Subsection (2)(a).

(3) (a) A civil action for treble damages and punitive damages may be brought against any person under Subsection (2) by the estate of a person whose death was caused in whole or in part by ingestion or other exposure to any illegal controlled substance.

(b) A civil action for treble damages, punitive damages, and costs of addiction treatment or rehabilitation may be brought against any person under Subsection (2) by a person who has become or is addicted to any illegal controlled substance and the addiction was caused in whole or in part by ingestion of any illegal controlled substance.

(4) The burden is on the estate or the addicted person to prove the causal connection between the death or addiction, any substances provided or administered to the deceased or addicted person, and the defendant.

(5) This section does not establish liability of or create a cause of action regarding:

(a) a parent or guardian of a person younger than 18 years of age who acts in violation of this section, unless the parent or guardian acts in violation of this section; or

(b) a person who is licensed under Title 58, Chapter17b, Pharmacy Practice Act, and who acts in accordance with the act.

Amended by Chapter 345, 2010 General Session

78B-3-901. Title.

This part is known as the "Expedited Jury Trial Act."

Enacted by Chapter 111, 2011 General Session

78B-3-902. Pilot project -- Rules and procedures.

The Judicial Council shall by rule create and provide procedures for a pilot project for expedited jury trials in civil actions.

(1) The program shall comply with all constitutional and statutory requirements for jury trials.

(2) All parties to an action shall agree to participation in an expedited jury trial.

(3) Any matters not expressly addressed in this part, in the implementing rules of the court, or in an agreement authorized by this part, are governed by applicable statutes and rules governing civil actions.

Enacted by Chapter 111, 2011 General Session

78B-3-903. Agreement.

(1) An agreement to participate in an expedited jury trial under this part may be entered into only after a dispute has arisen and an action has been filed.

(2) Any party to an action may file a motion with the court for an expedited jury trial.

(3) Notice of the motion shall be served on all other parties.

(4) All parties agreeing to participate in an expedited jury trial and, if represented, their counsel shall sign the agreement filed with the court.

(5) The agreement to participate in the expedited jury trial process is binding upon the parties.

(6) The conditions of the agreement shall include:

(a) waiver of the right to appeal the verdict;

(b) waiver of the right to move for a directed verdict;

(c) waiver of the right to file post trial motions, except as permitted by rule and Section 78B-3-906; and

(d) an agreed-upon range of monetary damages that will be awarded, regardless of the verdict.

(7) The Judicial Council may by rule impose additional reasonable conditions.

(8) If the jury verdict is within the agreed range of monetary damages, the court shall enter the verdict as rendered. If the jury verdict is outside the agreed range of monetary damages the court shall, as appropriate, increase or decrease the damages to the minimum or maximum agreed amount.

Amended by Chapter 167, 2012 General Session

78B-3-904. Juries.

(1) Juries in expedited jury trial cases shall be composed of no less than six jurors with no alternates.

(2) Nothing in this part is intended to preclude a jury from deliberating as long as needed.

Enacted by Chapter 111, 2011 General Session

78B-3-905. Rules of evidence.

(1) The rules of evidence apply in expedited jury trials, unless the parties stipulate otherwise.

(2) Any stipulation by the parties to use relaxed rules of evidence may not be construed to eliminate or affect the right of a witness or party to invoke any applicable privilege or other law protecting confidentiality.

(3) The right to issue subpoenas and notices to appear to secure the attendance of witnesses or the production of documents at trial shall be in accordance with the Utah Rules of Civil Procedure.

Enacted by Chapter 111, 2011 General Session

78B-3-906. Post-trial motions -- Appeals.

(1) A party may move for a new trial or appeal a judgment only on the following grounds:

(a) judicial misconduct that materially affected the substantive rights of a party;

(b) misconduct of the jury;

(c) corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party that prevented a party from having a fair trial; or

(d) to correct errors of law.

(2) Parties may file post-trial motions:

(a) relating to costs and attorney fees;

(b) to correct a clerical error in a judgment; and

(c) to enforce a judgment.

Enacted by Chapter 111, 2011 General Session

78B-3-907. Attorney fees.

Unless the parties otherwise agree in the consent order, all statutes and rules governing costs and attorney fees apply in expedited jury trials.

Enacted by Chapter 111, 2011 General Session

78B-3-908. Judicial Council to make rules.

The Judicial Council shall, on or before July 1, 2012, adopt rules and forms to establish uniform procedures implementing the provisions of this part, including:

(1) additional content of proposed agreements;

(2) pretrial exchanges and submissions;

(3) pretrial conferences;

(4) time limits for jury selection;

(5) time limits for trial, including presentation of evidence and argument;

(6) presentation of evidence and testimony; and

(7) any other procedures necessary to implement this part.

Enacted by Chapter 111, 2011 General Session

78B-3-909. Report to Legislature -- Repeal date.

(1) The Administrative Office of the Courts shall present a report to the Judiciary Interim Committee not later than September 2016 regarding the program. The report shall include:

(a) the number of expedited jury trials held;

(b) the number of appeals from expedited jury trials;

(c) the approximate cost increase or cost savings experienced by using expedited jury trials; and

(d) a recommendation to continue or sunset this part.

(2) This part is repealed January 1, 2017.

Enacted by Chapter 111, 2011 General Session